

**Asheville City Council Meeting Minutes
Tuesday – February 13, 2007 - 5:00 p.m.**

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (arrived in meeting at 7:58 p.m.); Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

PLEDGE OF ALLEGIANCE

Vice-Mayor Jones led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. OPEN TENNIS CHAMPIONSHIP

Councilwoman Cape recognized Ms. Laura Loftis, Aston Park Tennis Manager, who was awarded, on behalf of the City of Asheville, the 2006 Adult Tournament of the Year Award from the US Tennis Association.

B. PROCLAMATION PROCLAIMING FEBRUARY, 2007, AS "BLACK HISTORY MONTH"

Councilman Newman read the proclamation proclaiming the month of February, 2007, as "Black History Month" in the City of Asheville. He presented the proclamation to Mr. Johnny Hayes, President of the Local NAACP, who briefed City Council on the history of the month.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Item "F" was removed from the Consent Agenda for an individual vote.

A. APPROVAL OF THE MINUTES OF THE RETREAT HELD ON JANUARY 19, 2007, AND THE REGULAR MEETING HELD ON JANUARY 23, 2007

B. RESOLUTION NO. 07-24 -- RESOLUTION AUTHORIZING THE MAYOR TO CONVEY EXCESS RIGHT-OF-WAY ON HAYWOOD STREET IN EXCHANGE FOR A RIGHT-OF-WAY OVER A PORTION OF REAL PROPERTY ON ROBERTS STREET

Summary: The consideration of a resolution authorizing the Mayor to convey excess right of way on Haywood Street in exchange for a right of way over a portion of real property located on Roberts Street.

The City and Urvana, LLC (Urvana) have negotiated an exchange of excess right-of-way on Haywood Street for a right-of-way easement across real property located on Roberts Street.

The excess right-of-way property is along the south side of Haywood Street at its intersection with Roberts Street comprising 661.3 square feet and includes a retaining wall which the City maintains. The conveyance to Urvana would reserve an easement to the City for access to the wall for maintenance. A portion of the building owned by Urvana encroaches onto this parcel

The property to be exchanged by Urvana is a 32.5 square feet portion of (PIN 9638.08-98-0734) a 0.19 acre parcel on the west side of Roberts Street at its intersection with Haywood Street. A portion of the sidewalk encroaches onto this parcel.

The value of the excess right of way to be exchanged is estimated at about \$1,015 and the estimated value of the property to be received is around \$104 based on an extrapolation from the tax value of the adjoining land. The difference in value between the two properties is about \$911, rounded = \$900. Urvana has offered cash payment of \$900 as part of the exchange.

Pros:

- The exchange will be a fair exchange of value for value.
- It will return property not needed for public use to the tax rolls.
- It will retain sufficient right-of-way for public safety and access for maintenance of the retaining wall.
- It will facilitate the renovation of the building by resolving the encroachment issues.

Con: There are no negative impacts.

Pursuant to N. C. G. S. 160A-271 a notice was duly published in the Asheville Citizen-Times on January 19, 2007.

Approval of the resolution will authorize the exchange of the properties through the process provided in N. C. G. S. 160A-271.

Economic Development staff recommends adoption of a resolution authorizing the Mayor to convey excess right of way on Haywood Street in exchange for a right of way over a portion of real property located on Roberts Street.

RESOLUTION BOOK NO. 30 – PAGE 201

C. RESOLUTION NO. 07-25 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON MCDOWELL STREET TO CHSA BUILDING PARTNERSHIP

Summary: The consideration of a resolution authorizing the Mayor to convey land on McDowell Street to CHSA Building Partnership in the amount of \$17,400.

On January 9, 2007, City Council authorized advertising for upset bids pursuant to a bid from CHSA Building Partnership in the amount of \$17,400. The advertisement was published on January 19, 2007, and no upset bids were received.

Disposal Parcel 152 is a 0.08 acre rectangular shaped lot on the east side of McDowell Street about 450 feet south of the intersection with Choctaw Street. The land slopes upward from McDowell Street to the rear line. It is covered with natural vegetation consisting of grass, small trees and brush. The parcel is zoned Institutional and the character of the surrounding neighborhood is primarily medical offices. The highest and best use for the subject parcel would be assemblage with an adjoining parcel.

CHSA owns the adjoining property where the medical offices of Carolina Hand Surgery Associates, P.A. are located. The proposal would combine Disposal Parcel 152 with property owned by CHSA for potential expansion of the existing development.

Approval of the resolution will authorize the sale of the property to CHSA Building Partnership.

Pros:

- The sale will be at fair market value as established by the tax appraisal and the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.
- It will facilitate expansion of existing development.

Con: There are no negative impacts.

Economic Development staff recommends adoption of a resolution authorizing the Mayor to convey land on McDowell Street.

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D. RESOLUTION NO. 07-26 - RESOLUTION AUTHORIZING CATALINA COURT IN THE SAND HILL ROAD AREA TO BECOME A PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution authorizing Catalina Court in the Sand Hill Road area of Asheville to become a publicly maintained street.

Section 7-15-1(f)-4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Catalina Court is a developer-constructed street that has an average width of 24 feet and a length of 0.12 miles. Transportation and Engineering Department Staff inspected this street and finds it to be constructed in accordance with the approved standards.

Following City Council's approval of this resolution, Catalina Court will be added to the official Powell Bill list.

Pros:

- The City will receive Powell Bill funds from the NCDOT to maintain the roadway.
- Homes constructed on this roadway increase the tax base in the City.

Con:

- Powell Bill funds will not cover 100% of the cost to maintain the street.

City staff recommends City Council adopt a resolution authorizing Catalina Court in the Sand Hill Road area of Asheville to become a publicly maintained street.

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E. RESOLUTION NO. 07-27 - RESOLUTION SETTING A PUBLIC HEARING DATE ON FEBRUARY 27, 2007, FOR VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 341 ROCKWOOD ROAD

Summary: The consideration of a resolution setting a public hearing date for voluntary annexation of property located at 341 Rockwood Road.

Crown/Asheville, LLC has petitioned the City of Asheville for the annexation of one lot located at 341 Rockwood Road in South Buncombe County (off of Airport Road) containing a total of approximately 1.93 acres. The area, while contiguous to other non-contiguous ("satellite") properties in the City of Asheville, is not contiguous to the primary corporate limits of the City and therefore is subject to the standards for annexation of noncontiguous areas contained in NCGS 160A-58.1.

Pursuant to NCGS 160A-58.2, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for City Council to fix the date for the public hearing on this matter. It is recommended that the public hearing date be February 27, 2007. Should City Council decide to proceed with this request, the effective date for the annexation would be April 30th of 2007.

This action complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas and meeting the goal of continued use of the urban development tool of annexation in providing for the orderly growth of the City.

Pro:

- “ Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.

Con:

- “ Marginal increase in service costs (too small to measure or respond to).

City staff recommends City Council adopt a resolution setting a public hearing date on February 27, 2007, for voluntary annexation of property located at 341 Rockwood Road.

RESOLUTION BOOK NO. 30 – PAGE 205

F. RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

This item was removed from the Consent Agenda for an individual vote.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Councilman Freeborn moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Cape and carried unanimously.

ITEM PULLED OFF THE CONSENT AGENDA FOR FURTHER DISCUSSION

RESOLUTION NO. 07-28 - RESOLUTION AUTHORIZING THE MAYOR TO RENEW THE JOINT COOPERATION AGREEMENT WITH THE ASHEVILLE REGIONAL HOUSING CONSORTIUM

Summary: The consideration of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

In 1992 the Asheville Regional Housing Consortium was certified by the Department of HUD as an entitlement jurisdiction for the HOME Program. Asheville is the Lead Entity of the Consortium. Since 1992 the Consortium has received in excess of \$15 million for the production of housing affordable to low-income families in Buncombe, Henderson, Madison and Transylvania Counties. Federal regulations require the Consortium to be recertified with HUD every three years, in order to remain an entitlement jurisdiction. All required documentation for recertification must be submitted to HUD by June 30, 2007.

Pros:

- Asheville will remain Lead Entity of the Consortium.
- The Consortium will continue to receive HOME Program funds for the production of housing affordable to income-eligible families.
- The Consortium will remain an agency with regional cooperation in addressing affordable housing needs.

Cons:

- The Consortium will be without a Lead Entity and its certification as an entitlement jurisdiction will be in jeopardy with the Department of HUD.

Community Development Division staff recommends adoption of a resolution authorizing the Mayor to renew the Joint Cooperation Agreement with the Asheville Regional Housing Consortium.

Councilman Mumpower said that as of today the national debt is \$8.7 Trillion and felt it was irresponsible for the federal government and HUD to be sending this money that they don't have.

Councilman Newman spoke about the need for regional cooperation and this is a very successful regional partnership.

Councilman Newman moved to adopt Resolution No. 07-28. This motion was seconded by Councilwoman Cape and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 – PAGE 208

III. PRESENTATIONS & REPORTS:

**A. CIVIC CENTER COMMISSION PRESENTATION REGARDING THE
CIVIC CENTER CAPITAL IMPROVEMENT PLAN**

Mr. Max Alexander, Chair of the Civic Center Commission, said that City Council approved a five year Capital Improvement Plan (CIP) for the Civic Center at their December 12,

2006, meeting. At that time, Councilman Mumpower requested the Civic Center Commission review the plan and make comments they felt were appropriate concerning it.

At their January 15, 2007, meeting the Civic Center Commission unanimously approved the following as their response. Staff has added the estimated cost of each project.

The Civic Center Commission would first like to congratulate City Council for taking action to provide for a specific CIP action plan for the venue. At the same time, the Commission would request City Council consider broadening the scope of projects to include additional work on the Thomas Wolfe Auditorium (TWA), to include.

- Inspect the TWA roof: This could be completed at little or no cost to the City.
- Repair TWA roof as warranted: Staff is currently repairing it as part of their ongoing maintenance effort. No major problems are currently known to exist but the inspection noted above would assist in determining its overall condition and future repair costs.
- Repair interior ceiling and walls of TWA: Inspection should be the first step before proceeding. Because of scaffolding needed to reach the ceiling, the cost for this could be \$8,000 to the City. Actual repair costs depend on the inspection report. Previously staff have been told that a wide cost range is possible depending on plaster condition.
- Replace TWA carpet: Depending on final carpet selection, the cost could be \$45,000.

Other suggested Civic Center CIP items include:

1. Inspect the venue's fire alarm system: The alarm system is inspected every six months at present at a cost of \$600 per inspection. The cost for a completely new system could range as high as \$500,000.
2. Provide a weatherproof storage area for any new chairs purchased: Up to \$50,000 could be needed depending on final design.
3. Accelerate replacement of arena lighting: No additional cost to the City for this project, which is currently estimated at \$250,000, if the City chose to reprioritize it.

The total cost for the above projects and inspections total approximately \$105,000. If it were added to the first year's CIP budget, the new total would be \$465,000. Any additional monies required due to inspection of the TWA roof, fire alarm system or TWA plaster are not included.

The Civic Center Commission recommends City Council consider the additional CIP projects and approve them as part of the overall Civic Center CIP plan.

Mr. Alexander responded to various questions/comments from Council, some being, but are not limited to: has the Fire Department raised concerns over the Civic Center's fire alarm system; is there a potential to just replace the carpet in the high traffic areas vs. the entire auditorium; and does the Civic Center Commission have ready access to the Civic Center Director and the City Manager.

When Councilman Mumpower asked what other items the Commission would like to bring to City Council, Mr. Alexander said that they have made a tremendous amount of recommendations to the Civic Center Director and would like to implement (1) a customer and promoter satisfaction system; and (2) a driving utilization strategy to the Civic Center.

Councilman Mumpower felt we need to have the Civic Center Commission as a filtering system first on items affecting the Civic Center.

In response to Councilman Freeborn about how this will affect the Civic Center CIP, City Manager Jackson explained that he would prefer to have the opportunity to meet with the appropriate staff for responses and would be able to respond back to Council in approximately two weeks. In terms of carpeting, lighting, etc. we don't see that in the current year's budget as a priority, but it is something that we intend to go back through the Commission and then to the Council as we look in out-years to adjust the schedule.

Councilman Freeborn asked if Mr. Alexander had any suggestions in moving the dollars of the existing Civic Center CIP and reallocating those to pay for these recommendations. Mr. Alexander responded that that was not the charge given to the Commission; however, a suggestion might be to possibly lease some capital equipment vs. purchasing.

It was the consensus of City Council to instruct the City Manager to report back to Council on the suggestions made by the Civic Center Commission, along with the suggestion of leasing vs. purchasing capital equipment.

In response to Councilman Newman, Mr. Alexander said that the Commission is pleased that City Council has moved forward with implementing both the entire deferred maintenance plan and the facility upgrades (totaling approximately \$15 Million).

Councilman Newman moved to (1) support implementing both the entire deferred maintenance plan and the facility upgrades, totaling approximately \$15 Million (which are identified on the full project list); (2) instruct the City Manager to take into consideration the specific recommendations by the Civic Center Commission; (3) affirm our support of the capital budget presented in December, 2006, which is roughly \$400,000 a year; (4) partner with Buncombe County and our State legislators in order to expedite the deferred maintenance and basic improvements; (5) ask for authorization for a 1-cent hotel occupancy fee to help address these needs at the Civic Center; and (6) support the efforts to study the financial viability of a

new performing arts center in downtown on City-owned land or elsewhere in downtown. This motion was seconded by Councilman Davis.

Councilwoman Cape wanted to make sure that as we look at a new performing arts center that we partner with those folks as well in helping us with the Thomas Wolfe and the Civic Center in the process.

There was a brief discussion about approaching our legislators and County Commissioners with a specific tax request or asking them to assist us with a revenue source. Councilman Newman said that we are asking for dialogue and the 1-cent hotel occupancy fee is our best idea. He would be open to other ideas on how to finance as long as they are fair and don't unfairly burden the middle class and working families in Asheville.

The motion made by Councilman Newman and seconded by Councilman Davis carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 30 - PAGE

B. ALCOHOLIC BEVERAGE CONTROL BOARD GOALS & OBJECTIONS FOR 2007

Alcoholic Beverage Control (ABC) Board Chair Charles Worley presented Council with a short summary of the contributions from the ABC system to the City over the past several years. The ABC system serves the City to control and regulate the sales of alcoholic beverages inside the City limits. Under state law, the profits of the system are distributed to the City and County.

Since the end of 2004 fiscal year, sales have grown over \$2.8 Million resulting in a substantial increase in distributions to the City and County. In 2004, the City's distribution was \$258,150; in 2006 it was \$480,876, and increase of 86%. Results for the first half of this fiscal year reflect a 30% increase to date in profits of the system. Working capital in the system has increased by 22%, creating a solid platform for operations in the future.

At the same time we are working to improve operations and profitability, we are also being proactive in dealing with alcohol education and abuse. By law, we are mandated to distribute a minimum 7% of the net profits to programs that deal with alcohol education and rehabilitation. Our distributions to these programs have increased by over 25%. In addition, we participate in programs to prevent the sale of alcohol to underage individuals partnering with the N.C. ABC Education Division and national organizations. We have instituted training programs with our mixed beverage permittees to responsibly serve the public and prevent underage drinking.

While we are working hard to streamline our operations and become more efficient, we are also looking to the future and planning to be able to better serve our customers and benefit the City.

We are in the process of decentralizing our wholesale mixed beverage outlet functions to give our business customers a greater choice in how they do business with us as our mixed beverage sales have increased 31% since 2004. As a part of this decentralization, the hours available to our business customers have also increased.

We have engaged in a long-range planning process utilizing the demographics of the area, sales and growth patterns, and other factors to enable us to plan stores of types and in locations that will better serve our customers and the City. It recently became necessary to replace our Long Shoals Road store due to the re-widening of Long Shoals Road and we are set to re-open a newly constructed store on Long Shoals Road next month. Our Biltmore store, so heavily devastated in the Biltmore Village flood of several years ago, was recently sold (although we are continuing to lease the building for the short-term) and we are actively seeking replacement property upon which to construct a new store in a location more convenient to our customers.

Our Merrimon Avenue store, long the most profitable of all of our customers, is in the process of undergoing extensive remodeling so that we can better serve our customers on the north end of the City. We have recently acquired property on Tunnel Road to serve as a site for the replacement of the existing Tunnel Road store. That store is now on the market with proceeds from the sale expected to be reinvested in the construction of a new store at the recently acquired site. The new location will, again, better serve our customers and provide easier access, especially during peak business seasons along Tunnel Road.

Our long-range plans have identified the need to better serve our customers in west Asheville and we have acquired property out New Leicester Highway upon which we can build a new store in the coming years. While we are not ready to begin the construction of a new store at this time, we see that process beginning in the next several years as growth continues to occur along that corridor.

Our goal is to continue to serve the City of Asheville and its citizens and residents by continuing to make our operations more efficient, by developing stores that better service the customers, and by making certain that alcohol is served responsibly within the City of Asheville, whether through sales at the ABC stores or through sales at mixed beverage outlets. We are committed to making our mandated distributions of profits for alcohol education and alcoholism and/or substance abuse treatment programs to those organizations that can best produce results for the benefit of the public.

The next few years will see substantial changes in the ABC system in Asheville as we move forward with our plans to continue improving efficiency, educating our citizens, meeting the needs of our customers, and serving the City of Asheville.

In response to Councilman Davis, Mr. Worley said that they are not aiding in the effort of Buncombe County's new detox center. Even though he didn't think their distributions can be for capital improvements, he would be happy to talk further with Councilman Davis to see if there is a way they can assist.

In response to Councilman Mumpower about how the City of Asheville can help the ABC system, Mr. Worley said that the ABC Board has sold two of their stores and under the State law, those funds are considered part of their income, in terms of the mandated distribution. This City Council can allow them to exclude that from the income so that it can be put back into capital. A request will be coming before Council requesting City Council to exclude those funds received from the sales of those stores, so that those monies in total can be put back into the construction and acquisition of the new stores. City Attorney Oast said that this request will be on the agenda soon.

C. DISCUSSION OF SCHOOL BOARD PROCESS

Vice-Mayor Jones, Chair of the Boards & Commissions Committee, outlined the School Board process for the two vacancies. It was confirmed by City Council that candidates must live in the City limits and live in the Asheville School District. The deadline for applications will be February 27, 2007, the interviews will held on March 20, 2007, and the appointments will be made on March 27, 2007.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR SUNSET PARK FOR THE EXPANSION OF THE EXISTING RETAIL BUILDING AND ASSOCIATED SITE UPGRADES

Vice-Mayor Jones announced that this public hearing will be re-advertised for February 27, 2007.

B. PUBLIC HEARING TO PERMANENTLY CLOSE A PORTION OF VANCE GAP ROAD

RESOLUTION NO. 07-30 - RESOLUTION PERMANENTLY CLOSING A PORTION OF VANCE GAP ROAD

Vice-Mayor Jones opened the public hearing at 6:16 p.m.

Mr. Richard Grant, Assistant Public Works Director, said that this is the consideration of a resolution to permanently close a portion of Vance Gap Road. This public hearing was advertised on January 19, 26 and February 2 and 9, 2007.

N.C. Gen. Stat. sec. 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, Brian Cauthren on behalf of Zealandia Holdings, LLC has requested the City of Asheville permanently close a portion of Vance Gap Road that runs between their properties (also known as Old Chunns Cove Lane).

Public Works Department staff has researched and determined this portion of Vance Gap Road is not City maintained. Closure of this portion of street will not deny any of the adjoining property owners' reasonable means of ingress and egress as Zealandia Holdings, LLC owns all adjoining property along the portion requested to be closed.

The Greenway Commission reviewed this request and said that Vance Gap Road is not in the general path of the greenway plan, so closing this road should not affect the greenway plan for this area. However, the Greenway Commission does want to keep that option open to be used as a greenway. He did talk with Mr. Cauthren and he is more than willing to sit down and discuss a possible easement for a greenway, which will connect with the other sections.

Pros:

- The closure allows the property to be used to its maximum potential.
- There will be no future compromise of ingress/regress to other property

Cons:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

City staff recommends that City Council adopt a resolution to permanently close a portion of Vance Gap Road.

Vice-Mayor Jones closed the public hearing at 6:18 p.m.

Vice-Mayor Jones said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

City Attorney Oast said that the resolution before Council does not address a greenway easement and if Council would like that assurance, he suggested Council continue the matter until that language is inserted in the resolution.

Mr. Cauthren said that they are open and willing to grant the City an easement across the property as worked out by both parties at some point.

City Attorney Oast said that the law allows the City to retain easements for utilities and not necessarily for greenways. If Council is satisfied with Mr. Cauthren's verbal promise to grant the City a greenway easement at a negotiated location, he could work with that.

Councilman Freeborn moved for the adoption of Resolution No. 07-30, noting the verbal assurance that Mr. Cauthren will grant the City a greenway easement at a negotiated location. This motion was seconded by Councilman Mumpower and carried unanimously.

**C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A
CONDITIONAL USE PERMIT FOR THE WAL-MART EXPANSION
LOCATED AT 1636 HENDERSONVILLE ROAD, FOR THE EXPANSION
OF THE EXISTING RETAIL BUILDING AND ASSOCIATED
UPGRADES**

**ORDINANCE NO. 3437- ORDINANCE GRANTING A CONDITIONAL
USE PERMIT FOR THE WAL-MART EXPANSION LOCATED AT 1636
HENDERSONVILLE ROAD, FOR THE EXPANSION OF THE EXISTING
RETAIL BUILDING AND ASSOCIATED UPGRADES**

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Vice-Mayor Jones opened the public hearing at 6:26 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Planning & Development Director Scott Shuford submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Shuford said that this is the consideration of the issuance of a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades.

On July 27, 2006, the petitioner Wal-Mart Stores, Inc., submitted conceptual site plans for a proposed store expansion, interior remodel and associated site upgrades at their south Asheville location in the Forest Ridge Shopping Center. It was determined that this project would reviewed as a Level III project because the total expansion area exceeds 25% of the building size threshold for a Level III project (refer to Section 7-5-9(a)(1)b.). Additionally, the overall size of the development requires that the project be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures. These development standards address building design, architectural compatibility with the surrounding area, landscaping, pedestrian safety and public enhancements.

The project site is located in south Asheville off of Hendersonville Road in the Forest Ridge Shopping Center (City Exhibit 3 - Aerial Map). The property consists of approximately 23 acres and is zoned HB (Highway Business). The majority of properties surrounding the site are also zoned HB (Highway Business) and consist of a mix of commercial and office uses. Two single-family dwellings, also zoned HB, exist along Peachtree Road, to the north of the site.

Primary access to the development is via a signalized intersection on Hendersonville Road. The site can also be accessed from Peachtree Road, which borders the north side of the property. A fairly large amount of mature vegetation exists along Hendersonville Road, portions of Peachtree Road and along the perimeter of the existing service area on the south side of the property. These vegetated areas will serve as credit towards meeting some of the landscape requirements and will only be disturbed for the installation of sidewalks and supplemental plantings that are necessary to comply with the Unified Development Ordinance (UDO) standards.

The Forest Ridge Shopping Center currently consists of an 81,922 square foot Wal-Mart store and 19 retail spaces consisting of 83,245 square feet. The project proposes the following (City Exhibit 3 - Site Plan and Façade Upgrades) (City Exhibit 4 - Site Designs):

<u>Existing Wal-Mart Store:</u>	81,922 square feet
Building Expansion (includes Front and South Side expansion for loading area)	<u>38,078 square feet</u>
New Store Total:	120, 000 square feet
<u>Existing Retail Spaces:</u>	83,245 square feet
Demolition of 7 spaces:	15,409 square feet
Rebuild of 3 spaces:	<u>7, 320 square feet</u>
New Retail Space Total:	75, 156 square feet
Total Shopping Center:	195, 156 square feet

In addition to the store expansion areas noted above, the entire site will be upgraded and brought into compliance with the overall development standards outlined in the UDO and also with the supplemental design standards for large retail structures (a total of 160 points must be achieved.)

Items of Interest

- Parking is shown at a rate of 4.09spaces/1000 square feet for a total of 491 parking spaces for the Wal-Mart development. Parking at a rate of 4.0spaces/1000 square feet for a total of

391 spaces is dedicated towards the remaining strip center. Combined is a total of 792 spaces that falls within the City of Asheville's minimum number of spaces required (558) and the maximum number of spaces allowed (976).

- The parking lot layout will incorporate the use of several retaining walls ranging in height from 3-feet to 8-feet in height. The parking lot in front of the Wal-Mart store will sit above the parking lot associated with the strip retail center.
- Enhanced parking lot landscaping is proposed for the entire site (including the existing service area for the development along the south side of the property.)
- New enhanced architectural façade and other exterior building and site upgrades illustrate compliance with the supplemental development standards outlined in Appendix 7-F with a possible total of 165 points. Some enhancements noted: sidewalks with pedestrian seating areas along the front façade, installation of transit shelter along Hendersonville Road, and pedestrian connections to Peachtree Road and Hendersonville (to be provided per the Technical Review Committee (TRC) conditions.)

On August 21, 2006, the TRC reviewed and approved Wal-Mart's initial proposal with conditions. The applicant requested several postponements of the review by the Planning and Zoning Commission in order to allow additional time to address some of the TRC conditions. Upon review of the revised plans staff noted a significant change in the alteration of the parking lot and felt it necessary to bring the project back before the TRC for review and comment. Subsequently, on November 21, 2006, the TRC reviewed and approved the project subject to all conditions outlined in the staff report.

Section 7-16-2(c) of the UDO states that the Asheville City council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on evidence and testimony received at the public hearing or otherwise appearing in the record of case.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements once the conditions enumerated by the TRC are met. The project must meet the technical standards set forth in the UDO, the City Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The project site is already developed and is currently supporting a large retail development. Grading of the site will be necessary to build the project, as proposed. A fair amount of grading will occur within the existing parking area located in front of the existing Wal-Mart store where the main building addition, strip center addition and new parking lot layout is proposed.

It should be noted that the amount of existing impervious surface area is being reduced with the redevelopment eliminating the need for improvements to the current stormwater system that serves the development.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The project site is already developed and currently used as a large retail development. The proposed project and associated site upgrades will greatly enhance the shopping center and is likely to add to the value of adjoining or abutting properties. Additionally, required landscaping and buffers will shield the project from less intensive uses.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The project site and those properties adjacent to it are all zoned Highway Business district and consist of a wide range of uses and a mixture of both small and large scaled buildings. The project proposes an enhanced building façade and site upgrades that increases it's compatibility with the immediate and surrounding area.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

This development supports the *Asheville City Development Plan 2025* objectives concerning infill development and the adaptive reuse of properties through flexible development standards. It also implements the strategy of permitting more intense commercial and office developments in locations where adequate public facilities exist.

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

Development of the site will require final technical approval from all applicable departments including representatives of the Water Resources, MSD, Engineering, Fire and Building Safety Departments. Review of the conceptual plans by various City departments has found that adequate sewage and water utilities are available for the proposed expansion.

Additionally, the site is served by two bus routes, one along Hendersonville Road and one that loops through the shopping center parking lot. The site plan proposes construction of two bus shelters, one in the parking and one at the bus stop on Hendersonville Road.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

The proposed project has been reviewed by the City's traffic engineer and is not expected to create additional traffic congestion or increase traffic hazards. The overall size of the development did, however, warrant submittal of a Traffic Impact Analysis (TIA) that will require modifications and lengthening of the right hand turn-lane on Hendersonville Road.

On December 3, 2006, the Asheville Planning and Zoning Commission reviewed the proposed development and made a positive recommendation (6-0 vote) to approve the project subject to the conditions outlined by staff and with the following conditions: 1) the developer shall provide a pedestrian connection from the bus stop on Hendersonville Road to the shopping center, and 2) the developer shall provide enhanced security in the lower lot due to its physical separation from the upper parking lot and building site.

Subsequent to the Planning and Zoning Commission meeting the developer contacted the City Engineering and Building Safety departments to address the topography constraints in providing a pedestrian connection from the bus stop on Hendersonville Road to the shopping center. Together, it was determined that a 5-foot sidewalk incorporating 5-foot landing pads at regular intervals could be provided along the driveway entrance road to the edge of the lower parking lot where internal sidewalks would then provide a connection to the shopping center. This appears to satisfy the Planning and Zoning Commission's condition noted above. Details concerning security in the lower parking lot will be addressed during the final review by the TRC.

Pro's

- Staff has not received any negative comments from the public regarding this development proposal.
- The overall size of the "renovated" Wal-Mart building (120,000 sq. ft.) is well below the average size of most new Wal-Mart's constructed today (averaging up to 180,000 sq. ft.)
- All existing perimeter vegetation will be preserved and will continue in providing an effective buffer to adjacent less intense commercial uses.
- A reduction in the overall existing impervious surface area eliminates the need for changes to the existing stormwater management on site.

- An enhanced architectural building and landscaped parking lot will significantly improve the overall appearance of the shopping center making the development more compatible with the surrounding area.
- Since the Planning and Zoning meeting, the applicant has revised the application to include upgrades to the exterior façade of the entire shopping center so that it is architecturally compatible with the proposed Wal-Mart façade.

Con's

- Existing topographic changes between Hendersonville Road and the shopping center make it difficult to provide a fully handicap accessible pedestrian connection from the street to the building.
- The building expansion and renovation of the existing parking lot will create the need for several interior retaining walls resulting in a split level parking area. The retaining walls, however, will be screened with vegetation masking the height of the walls.

Staff recommends approval of the project, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; and (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review.

In addition, a request has been received today regarding a portion of Peachtree Road. Said request, by Nettlewood Professional Park, is to upgrade Peachtree Road in lieu of placing sidewalks on the south side of Peachtree. The purpose behind that is to have a more consistent design of that road going into the Nettlewood development. Staff has looked at that and feels comfortable that the road upgrade would be preferable to the pedestrian upgrade because we have other ways to get in and out of the site from a pedestrian standpoint.

Mr. Ashley Storey spoke in support of the expansion, upgrade and renovation of not only the Wal-Mart store, but portions of the Center as well. Even though he felt that the development did not have to be evaluated for compliance with Appendix 7-F, Supplemental Development Standards for Large Retail Structures, they did accumulate more than the 160 points that would have been required, had it applied.

Mr. Alan Johnson, engineer with Freeland and Kauffman Inc. working on behalf of the applicant, said that the existing site does not meet or come close to the current City of Asheville standards. There is a fair amount of existing vegetation and landscaping around the perimeter of the site and we are working not to impact those areas (Applicant Exhibit 1 - Landscape Plan). There are also two existing stormwater ponds that front Hendersonville Road that will remain in use. Even with the existing site constraints, it is our opinion that the site plan incorporates the site standards and does comply with Appendix 7-F. Wal-Mart will be expanded by demolishing approximately 15,000 sq. ft. of retail shops and about 7,300 sq. ft. of new retail shops will be built. The retail shops that will remain will stay operational during construction and they will receive exterior renovations. With the proposed upgrades, we are eliminating over 250 parking stalls. With this reduction, we will add a lot more pervious coverage on the site. A key aspect of this project is the expanding off the front of the Wal-Mart and the fact that the existing parking lot is sloped at 4% towards Hendersonville Road. In order to address this concern, we created tiered parking. We propose a parking lot through the middle of the parking field and within the island will be two retaining walls which the highest point being approximately 8 feet. With the tiered system, the parking field in front of Wal-Mart will be graded and constructed to the City standards. The western portion of the parking field (the area in front of the retail shops that remain) will receive an asphalt overlay and will be brought up to City standards by implementing and constructing new interior islands. There will be some grading in the rear of the development (southern area) and the remaining areas behind the retails as well as behind Wal-Mart will receive an asphalt overlay. A concern that was raised was the issue of security, specifically on the lower section of the tiered wall in the parking field. In an effort to address this concern, we will provide plenty of security cameras that will be placed all around the property. In addition, all the on-site lighting will be upgraded to provide the appropriate illumination and adequate safety while adhering to the City's standards. A feature we incorporated with this upgrade is pedestrian connectivity. We have proposed a 5-foot sidewalk that will run down the center of the parking island as well as the areas where the retaining walls are. The retaining walls will be designed with stairs in three areas to allow for additional connectivity throughout the site. There will be direct sidewalk connectivity from the Wal-Mart entrance to the existing Hendersonville Road signal. There will be sidewalks and the necessary landings constructed along the north side of the existing access drive at the signal. There will also be direct sidewalk connectivity from the Wal-Mart entrance to the Peachtree Road right-of-way. These direct connections will have a safe street crossing as all on-site crossings will consist of stamped asphalt. That is a visual and audible stimulus enhancement to alert drivers. We have also worked with the City's Engineering Department on off-site sidewalk locations. Sidewalks will be provided along the east side of Hendersonville Road from the southernmost point of the property north to the Peachtree Road intersection. A sidewalk will also be provided along Peachtree Road fronting the property and a connection will be made to the existing sidewalk on the north side of Peachtree Road. There will be two bus shelters that can be accessed via sidewalks. Other off-site improvements will consist of the lengthening of the right turn lane on Hendersonville Road, providing new pedestrian signals, and upgrading of the landing areas at the existing signal. We are providing a great amount of landscaping on site. We will preserve existing vegetation and also create adequate buffers. We will eliminate parking along the north side of the property (along Peachtree Road) to provide a 30-foot buffer. All retaining walls that will be constructed on site will be screened with vegetation. This development reduces the amount of pervious coverage on the site. The

site goes from the existing .3 acre of interior greenspace to over an acre of interior greenspace. He urged City Council to support this project.

Mr. Jim Gallagher, architect for the applicant, discussed the Wal-Mart elevations (City Exhibit 4).

Mr. Fred English, resident in Haw Creek, felt that we don't need this Wal-Mart as there are others around Western North Carolina. He felt we needed to take care of our local businesses.

Mr. John Spake read a letter from Mr. Richard Grant, Member Manager of Nettlewood Associates LLC (Neighborhood Exhibit 1) which reads in part "As we understand it, the current proposal adds a sidewalk with curb and gutter to the southern edge of Peachtree Road, but does not address the northern edge, the width of the road nor the resurfacing of the road. It is our recommendation and desire to see that the applicant not be required to add a sidewalk to this section of Peachtree Road, but in turn be required to upgrade Peachtree Road to as close to a standard width of a two-lane City street and provide for curb and guttering on both edges of the Peachtree Road. This improvement would be much more beneficial to the applicant's project and the surrounding properties. ... We would ask that upon approval of this project, City Council amend staff's recommendation to delete the requirement for a new sidewalk along Peachtree Road and instead require the applicant to widen Peachtree Road to the maximum width allowed by the existing ROW with the installation of curb and gutter on both sides of the road and the resurfacing of the road from Hendersonville Road to where Peachtree Road enters the Nettlewood property (the point of prior improvement). Said letter was signed by Nettlewood Associates, Beverly-Grant, ABC Pediatrics, Asheville OBGYN, Med Oasis, Biltmore Associates, Healthcare Business Consultants, AG Edwards & Sons, Lawson Chiropractic, Southern Community Bank, eRx/Allwin Data, Charter Communications, Skidmore Harris & Burlingham, Spake Real Estate, Academy of Asheville, and Lifehouse Apartments/VOA.

After rebuttal, Vice-Mayor Jones closed the public hearing at 6:52 p.m.

Councilwoman Cape requested shade trees along the pedestrian amenities. In addition, for this to be a pedestrian friendly aspect, we need to make it easy for people to walk. Therefore, she also requested stairs be constructed on the lower tier parking area near Hendersonville Road in addition to keeping the sidewalk and landings on the north side of the property.

Councilman Mumpower asked the developer their thoughts about Nettlewood's recommendation to delete the sidewalk requirement along Peachtree Road and in turn upgrade Peachtree Road. Mr. Storey said they followed staff's recommendation which was not to upgrade Peachtree Road. They have not done any engineering studies or cost factors to determine if that is feasible to do because they have been working on what staff recommended - curb and gutter and sidewalk on our side of the right-of-way on Peachtree Road. They would be happy to talk with the adjoining land owners but because of the uncertainty, they requested that the Road upgrade not be a condition of the conditional use permit.

Councilman Mumpower moved for the adoption of Ordinance No. 3437, granting a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review; and (7) that the requirement for the sidewalk along Peachtree Road be waived if, upon further evaluation, the applicant is willing to upgrade a section of Peachtree Road. This motion was seconded by Councilman Davis and carried unanimously.

At the request of Councilman Newman for a friendly amendment to address the concerns of Councilwoman Cape, Mr. Shuford suggested the condition that the developer and Planning staff explore other ways to make a more direct and safe pathway from Hendersonville Road to the lower level of the parking lot area and in addition that any of the pedestrian ways be treated with landscaping in a manner that would provide shade. Councilman Mumpower and Councilman Davis both accepted this friendly amendment.

Councilwoman Cape felt that the friendly amendment is not strong enough. City Council's job is to state the conditions upon which we are interested in partnering with the developer on this project and we want pedestrian amenities adequately addressed.

Councilman Newman felt the condition should be flexible and maybe the way the site plan is designed is the best and safest way. There may be a shorter route, but there may be some people that would prefer to walk longer than to have to walk up steps.

In response to Councilman Newman, Mr. Shuford suggested that if stairs would be provided in that location to try to make a more direct connection, then it be in addition to what is being proposed here, opposed to something that would be a trade-off. It would need to be reviewed by both our Building Safety Department and our Engineering staff with regard to whether that would be something that would have a lot of use and would be safe.

Councilman Newman re-worded the prior friendly amendment to ask Planning staff and the developer to explore whether there is a more direct pedestrian access that can be added to the development to enhance pedestrian safety and quality access to the site from Hendersonville Road to the lower level of the parking lot area. And if it is staff's determination that it is a feasible connection (doable, practical, safe and is a true amenity that has some merit with regard to pedestrian access to the property), then City Council expects City staff to insist the developer

install said access. In addition, that any of the pedestrian ways be treated with landscaping in a manner that would provide shade. Councilman Mumpower and Councilman Davis both accepted this re-worded friendly amendment. Mr. Storey felt confident that they could sit down with City staff and review the factors and respond in the spirit of what Council is saying. Mr. Johnson said that they would continue to work with staff and if it is doable, they will make it happen.

Councilman Mumpower felt that safety above all else should lead the way and trusts that City staff will make that a primary consideration.

In response to Councilman Newman, Mr. Shuford said that there appears to be some negotiation between Nettlewood Associates and the developer about the upgrade of Peachtree Road. If they can work out an arrangement that is satisfactory that enables Peachtree Road to be improved, then City staff would certainly sign off on that. If they cannot work out that situation, then the developer will do what is shown on the site plan, which is the sidewalk and curb and gutter on a portion of Peachtree Road.

The motion made by Councilman Mumpower and seconded by Councilman Davis granting a conditional use permit for the Wal-Mart expansion located at 1636 Hendersonville Road, for the expansion of the existing retail building and associated upgrades, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report and the conditions recommended by the Planning and Zoning Commission.; (2) The retaining walls proposed within the parking shall be screened with vegetation to reduce the visible appearance of the structures; (3) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these elevation drawings may result in reconsideration; (6) The project shall return to the Technical Review Committee for final review of site development plans to ensure compliance with the technical standards and any other conditions associated with the project review; (7) that the requirement for the sidewalk along Peachtree Road be waived if, upon further evaluation, the applicant is willing to upgrade a section of Peachtree Road; (8) to ask Planning staff and the developer to explore whether there is a more direct pedestrian access that can be added to the development to enhance pedestrian safety and quality access to the site from Hendersonville Road to the lower level of the parking lot area. And if it is staff's determination that it is a feasible connection (doable, practical, safe and is a true amenity that has some merit with regard to pedestrian access to the property), then City Council expects City staff to insist the developer install said access; and (9) any of the pedestrian ways be treated with landscaping in a manner that would provide shade, carried on a 5-1 vote, with Councilman Freeborn voting "no."

ORDINANCE BOOK NO. 23 - PAGE

At 7:40 p.m., Vice-Mayor Jones called for a brief recess. After the recess, at 7:58 p.m., Mayor Bellamy arrived at the meeting.

D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE THOMS ESTATE LOCATED ON BEAVERDAM ROAD, WILD CHERRY ROAD AND ELK MOUNTAIN SCENIC HIGHWAY FOR A RESIDENTIAL DEVELOPMENT CONSISTING OF 162 SINGLE AND MULTI-FAMILY DWELLINGS

City Clerk Lipe administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 8:00 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 Single and multi-family dwellings.

The Asheville City Development Plan 2025 states that infill development offers another method for implementing the City's Smart Growth vision. There are hundreds of vacant and under-developed properties scattered throughout the City and there are numerous developed properties that are ripe for redevelopment.

Another important goal of the City's Smart Growth program is the protection of open space and other natural areas. The positive aspects of open space preservation are many and include environmental benefits such as the preservation of native plant communities, the protection of wildlife habitat, increased water quality, and reduced erosion control. Protecting and restoring connections between parks, riparian corridors, greenways and other important ecological areas is a key concept for conservation development and ecosystem management. Networks of preserved open spaces and riparian corridors can also help to shape and guide urban form. Approximately 36.2 acres of the site is to be retained as contiguous open space of areas greater than two acres with large areas in the hillside area (>2,200 ft.) preserved as such. Additional open space is provided as isolated pockets surrounding the developed areas. The total

impervious surface of the project is limited to approximately 16 acres according to the submitted site plan. The development is to include a park with public access along Beaverdam Road, and an existing structure within this area is proposed to be converted into a community building/museum.

Lastly, the comprehensive plan encourages development that designs landscapes to absorb stormwater instead of carrying it off-site in storm sewers. The proposed development incorporates a number of best management practices including vegetated inceptor swales and rain gardens to treat and maintain stormwater onsite.

One of the objectives of the Strategic Operating Plan (SOP) is to promote strategies that encourage sustainable, high density, infill growth. Although this development is considered low density at less than 2 units per acre and is a greenfield development, it does propose a more sustainable development pattern that balances other goals. Additionally, the SOP supports planning that ensures transportation choices; a bus shelter will be placed in the proposed park along Beaverdam Road that may be reached from connections within the neighborhood.

This review concerns a proposed 162 single and multi-family neighborhood with development standard bonuses for number of dwelling units per building, setbacks, sidewalks and road modifications (City Exhibit 3 - Aerial Map). Pursuant to Section 7-16-2(b)(17) of the Unified Development Ordinance (UDO), development standard bonuses for residential zoning districts are reviewed as a conditional use.

The subject site is located in north Asheville, the vast majority of which is located within the City of Asheville's corporate limit, at 77 Elk Mountain Scenic Hwy (City Exhibit 3 - Site Plan). A small portion of the subject property is located within unincorporated Buncombe County. The only development proposed in the County's jurisdiction is a small portion of a driveway. The subject property consists of 17 parcels totaling approximately 82.7 acres in area. Two of the lots are zoned RS-2 (Residential Single-Family Low Density District), and the other 15 lots are zoned RS-4 (Residential Single-Family Medium Density District). The subject site is surrounded almost entirely by low density residential development and the Asheville Country Club (west).

The RS-2 zoning district was created to establish a low density for single-family dwellings and other compatible uses in recognition of environmental constraints such as, but not limited to, steep slopes, impervious soils, high water tables, and flooding. It is also the intent to preserve the general welfare by protecting important resources such as, but not limited to, watersheds and view sheds. In addition to recognizing environmental constraints and preserving important resources, the district is also intended to stabilize and protect the district's residential character while promoting a suitable environment for single-family living. The RS-4 zoning district was created with the same intent, but to establish a higher density at 4 units per acre and to support opportunities for other non-residential uses normally required to provide the basic elements of a balanced and attractive residential area.

Early in the application process, the developer held a separate neighborhood meeting on December 14, 2006, to help communicate the proposed development plans to the community.

Despite these efforts, staff has continued to receive numerous phone calls, e-mails, and other correspondence expressing a wide variety of technical and non-technical concerns throughout the review process.

The proposed development is classified as a “Planned Community” allowed under State statutes which allows for a different form of home ownership not commonly considered in Asheville. The community will appear and operate much like a single family neighborhood but without individual lot ownership. Instead, all property beyond the individual structures will be owned and managed by a homeowner’s association. This affords the developer more freedom in designing the layout of the community to achieve a comparable number of units while preserving additional open space and reducing infrastructure costs. The underlying zoning of RS-4 would not normally permit this form of development; however, Section 7-16-2(d)(17)(c.) of the UDO provides that, *in order to promote exceptional development projects, the city council may permit the alteration of development standards for projects that exhibit exceptional site and/or structure design that is appropriate to the architectural and/or environmental context of the surrounding neighborhood.* Through the various site plans, the applicant must demonstrate that the proposed development provides a minimum of three “exceptional development” features. The applicant has chosen to meet this requirement by incorporating the following standards into the project design:

- Higher quality building design
- Building design and orientation sensitive to surrounding neighborhood context and/or community heritage
- Enhanced stormwater management
- Pedestrian orientation and amenities (proposed to be restricted to residents only)
- The inclusion of transit facilities

At their December 18, 2006, meeting the Technical Review Committee (TRC) approved this project subject to the conditions in their staff report. However, certain aspects of the project continued to be explored with various city departments including building safety and engineering. At the TRC hearing, the applicant agreed that the proposed roads, with the exception of the areas indicated as driveways, would be public and built to city standards with the understanding that the applicant would continue to investigate the possibility of a gated community with private roads to be maintained by the homeowner’s association. Furthermore, because of the existing topography, the applicant has proposed to deviate from standard sidewalk design but would still have to comply with all applicable state accessibility and building code standards which becomes significantly more challenging when proposing private roads and rights-of-way. Prior to Planning & Zoning Commission meeting, the applicant’s designers did meet with representatives from the Building & Safety Department and, ultimately, were able to successfully demonstrate the project’s ability to comply with the state’s accessibility code while maintaining private roads and rights-of-way. The City of Asheville does allow private roads provided they are designed and built to public road standards; however, while there are no technical standards expressly prohibiting the use of gates, Planning staff did continue to advise the applicant that the recommendation beyond TRC would be that the roads and sidewalks remain open for public access regardless of the road status.

At the January 3, 2007, meeting of the Planning and Zoning Commission, a large number of residents came out to express concerns and opposition to the proposed development. The primary concerns voiced included:

- Density and scale
- Increased traffic/insufficient road infrastructure
- Decreased quality of life
- Devaluation of property
- Pedestrian and bicycle safety
- Restricted access (lack of connectivity to community)
- Increased stormwater runoff and erosion control
- Protection of endangered species

After significant public comment and detailed comments from the developer and the developer's counsel, the Commission deliberated at length and, after 2 failed motions, ultimately voted to approve the project (5-2) subject to the conditions recommended by staff with the following modifications:

- Eliminate condition #9 – that all roads and sidewalks remain open for general public access (no gates).
- Add new condition - explore the staff recommended Edgedale Dr./Tsali Trail access point for suitability as an emergency access only or investigate other more suitable locations for a third access.
- Add new condition - that the stormwater management measures be improved beyond those currently proposed.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**

This has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and all other applicable laws and standards that protect the public health and safety. Although all minimum technical standards appear to have been met the City's Standards and Specifications manual encourages connectivity of streets for safety and improved access and where permitted, a pedestrian connection to adjacent development may be required for increased pedestrian safety. The applicant is proposing to restrict access to the new roads and sidewalks and by not allowing open public access so it removes the opportunity for improvements to traffic congestion and pedestrian safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

The applicant has proposed a number of measures that will lessen the environmental impact on the project site. By clustering development, the proposed design decreases the amount of grading that will need to occur in order to accommodate the development while preserving a greater amount of overall open space. Over one-third of the property will be preserved as contiguous open space of areas greater than two acres. Additional open space is provided as isolated pockets surrounding the developed areas. It should be noted that a traditional subdivision would most likely result in a greater loss of forested areas, an increase in the amount of grading, lessen the likelihood for project amenities and would not require site plan review by the Planning and Zoning Commission or City Council.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

The master plan displays a topographically sensitive design that preserves a significant amount of open space including preserved buffer areas around the perimeter of the site; additionally, the applicant has stated that the homes will be highly detailed and constructed with high quality materials. Staff feels that the proposed project would have no discernible effect on surrounding property values.

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

The proposed development is a low density development of detached and attached single family homes and, as such, would integrate well with other single-family residences in the area. Additionally, a significant amount of open space is being preserved on the site effectively mitigating the mass of some of the larger structures through buffering and distance separation.

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

The application of exceptional development standards and proposed site features supports several goals and objectives as described in both the *Asheville City Development Plan 2025* and the *Strategic Operating Plan*. However, staff remains concerned over the applicant's desire to restrict access to the proposed roads and sidewalks through gates or other means which would reduce the projects attractiveness in terms of community connectivity and integration which is also a goal of the *ACDP 2025*.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The development will gain access from Wild Cherry Road, Elk Mountain Scenic Hwy., and Tsali Trail. Additional fire access points will be provided from Elk Mountain Scenic Hwy., Wild Cherry Rd., and Killian Rd. A bus shelter is being provided in the proposed park along Beaverdam Rd. In addition, technical review from other departments has not revealed any problems for providing an urban level of service to the development.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

A traffic impact analysis has been prepared and submitted to the city engineer for review. The proposed project is not expected to cause undue traffic congestion or create a traffic hazard. Alternative locations for the third access point (Tsali Trail) are possible and can be considered.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- A significant amount of the site will be preserved and undisturbed.
- Extensive trails and sidewalks would be provided connecting residents of the new development to the larger community.
- A transit shelter will be provided.
- Low Impact Development (LID) measures are proposed to aid in managing stormwater quality.

A community park is proposed along Beaverdam Rd.

Cons:

- Project will require modifications to site development standards including number of dwelling units per building, setbacks, stormwater, sidewalk, and road design.
- Applicant wishes to gate the community and prevent public access to roads and sidewalks which, if approved, would negatively impact pedestrian and vehicular connectivity.

Staff concurs with the Planning & Zoning Commission and recommends approval of the proposed project and Conditional Use Permit subject to the conditions in the TRC staff report and those listed below. Additionally, staff recommends approval to the development standard modifications listed above.

Staff would also recommend that Council consider the issue of whether the roads and sidewalks should remain open for public access. Should Council feel that this is not feasible, then staff would recommend that other options be explored including, but not limited to:

- Keep sidewalks open for public access (but not roads)
- Require other off-site improvements to aid in pedestrian safety
- Manage public access for vehicles by allowing the gates to be open from sun-up to sun-down and at any time as requested by emergency management officials.

Mr. Craig Justus, attorney representing the developer/applicant, (Applicant Exhibit 1) believed that this is an exceptional site design for this property. It is the position of City staff that they meet all seven standards for a conditional use permit. We are, however, asking for a few modifications. The City's 2025 Plan sets out many goals for development of the City and this project meets many of those goals. The only major point of difference between us and staff is whether this community should be gated. He said the Thoms family has owned this property since 1943 and though all those years this property has been a private estate. We are trying to maintain the private estate nature of this piece of property. We believe this project is the golden goose for the City of Asheville and this project should be approved because it enriches the community and the City of Asheville.

Mr. Kent Smith, CEO of Golden Development Resources, (Applicant Exhibit 2) said that Thoms Estate is a new standard for development. He looked for a viable way to develop the property and not compromise its integrity as a private estate in the process. This is a very attractive development plan that preserves greenspace. They developed a plan and met with the neighborhood. A number of their concerns are not necessarily as it relates to this development plan but about the City's ability to provide services for them and any additional homes. There is a need for refinement of the guidance that is provided to the development community. Regarding the concern of stormwater, our stormwater system controls the stormwater at a higher level than is being currently controlled. We will increase the value of the homes on a per unit basis through open space and the introduction of amenities, which is reflected in their price point. He noted that those things lose their value if they become available to the public at large. Our plan consists of (1) pedestrian-oriented streets, sidewalks and trails; (2) preserved open space - (a) stream and wildlife corridor has been preserved; (b) 36.7 acres of open space (44.5%); and (c) preserved open space is associated with the preserved historic structures on site; (3) environmentally sensitive design (e.g., stormwater management and preservation of steep slopes); (4) 5.28 acre of green space along Beaver Creek (community park) and restoration of the Killian House (circa 1834) as a community building; (5) 5 less acres of pavement; and (6) lower density. He showed a comparison of their plan and an alternate plan. The alternate plan is a plan that can be done with approval at the TRC level only. The alternate plan has zero green space and is a classic residential subdivision and the stormwater is controlled with pipes, discharging into Beaverdam Creek. Regarding traffic, they have two access points - one on Wild Cherry Road and one on Elk Mountain Scenic Highway. In order to keep people from driving through the development's residential neighborhood, they want the development to be gated. In the event of emergency access, even with gates, any emergency vehicle operators can open those gates and leave them open for alternate emergency access. We are replacing over a mile of new water and sewer lines which will benefit the residents on and off the site. The two access points - one on Tsali Trail and one off Wild Cherry that they don't know why they are required. We would like the ability to eliminate those two access arteries, which will receive tremendous support from the neighborhood. Alignment with 2025 consists of (1) managing stormwater and runoff to better-

than-predevelopment standards; (2) preservation of open space; (3) green building techniques (clustering of homes preservation of green space, using environmentally sensitive materials and building practices); (4) adaptively reuse existing onsite structures; (5) provide area for public transportation and a transit shelter; (6) design home layout to minimize impervious surface; (7) provide a public park on Beaverdam Road; (8) historical preservation of Killian House; and (9) encourages walking and biking. He urged Council's approval for (1) two access points (specifically eliminating the access point onto Tsali Trail); (2) removal of fire access easement over Dickerson Lane; (3) removal of sidewalk requirement on Tsali Trail (allows existing vegetation to be preserved); (4) private streets and controlled access; and (5) setup a task force to evaluate sustainable development and a means to encourage it.

Mr. Robert Dungan, attorney representing Mr. and Mrs. Pearlman, Ms. Cathy Mills, Ms. Virginia Mills, Mr. Ed Fisher and Ms. Susan Phillips, believed that City Council should not approve this conditional use permit as designed because it fails to meet many of the conditional use permit standards. Regarding Condition No. 2, if the staff feels that a traditional subdivision would most likely result in a greater loss of forested area and more grading, an exhibit demonstrating a legally compliant "traditional subdivision" should be submitted to demonstrate this finding. He said the green spaces in the plan are isolated and not contiguous. In addition, what will be the maintenance costs be to the City of the public park and the Killian House. Because there will be increased water flow, there should be forested corridors through the runoff areas. Regarding Condition No. 3, if the staff finds that developer will commit to high quality architecture, then a guarantee of "high quality" needs to be part of the conditions of approval. At a minimum, a package of design guidelines should be submitted to prove this finding. Regarding Condition No. 4, the proposed site is inconsistent with the pattern of development of Beaverdam and Elk Mountain Roads. Regarding Condition No. 5, the proposed site is inconsistent with smart growth policies, the goals of City Council, and transit supported development. In the City of Asheville 2025 Plan, Land Use Goal III, it says the City should permit and encourage transit supportive density (8-16 units per acre minimum) along and adjacent to major corridors and at logical transit nodes. The majority of the density is too far to support transit. They would have to move the density to where it can support transit. In the City of Asheville 2025 Plan, Land Use Goal V, it says the City should encourage the construction of affordable housing throughout the community. In the City of Asheville 2025 Plan, Land Use Goal IX, Strategy 5, it says the City's open space standards should require the connection of open space areas where feasible. The green spaces should be contiguous habitat in order to provide environmental corridors for habitat circulation. And, in the City of Asheville 2025 Plan, Land Use Goal X, Strategy 1, the City should revise its subdivision regulations to require pedestrian, where feasible, vehicular connections within the subdivision and between the subdivision and adjacent property. A gated entry will facilitate access, but negate neighborhood connectivity which contradicts the goals of the 2025 Plan. Regarding Condition No. 6, the bus shelter is required for this project, but the site, as proposed, does not support this facility because the majority of the density of the site is too far away from the facility to make effective use of it. In addition, he questioned whether a project three miles from the City center qualifies as infill development. Regarding Condition No. 7, there were some questions about traffic off of Kimberly as to how many of those people drive up and use Town Mountain Road to get to the City as opposed to use Beaverdam Road, and whether or not there was any attention in the report to the traffic coming out of the Asheville Country Club and the numerous golfers. He felt City Council should turn down this

development as designed. The developer should reconsider his design and make changes, such as move the majority of the density toward Beaverdam Road; connect the undisturbed habitat with the undisturbed forest corridors; design guidelines for the architecture that we would know what is coming; no gates on the development; delete the park; and keep the floodplain with the homeowners association maintaining it or use it as an alternate ingress/egress point opposed to Wild Cherry Road.

The following individuals spoke against the conditional use permit for various reasons, some being, but are not limited to: entrance will be cut directly across from 66 Elk Mountain Scenic Highway, causing depreciation of property values and destroying peace and privacy; during build-out the roads will be subject to heavy equipment, construction traffic, excessive use, problematic accidents, problems with passage of school bus traffic, and endanger lives of children; grave concern for bicyclists who use Elk Mountain Scenic Highway to access the Blue Ridge Parkway; the entrance should be located at the entrance of the Killian House property; the Killian House entrance is only 6/10 of a mile from the Beaverdam Fire Department; there are 4 existing hard surface entrances to the Thoms property from Elk Mountain Scenic Highway that could be used for emergencies; suspicion that the City rebuilt a bridge on Wild Cherry Road and widened the bridge on the proposed subdivision side; we are endanger of losing our value of place; no gated community because gates are designed to keep the community out and are built to market to wealthy people who are coming from other places who are afraid of crime; increased water runoff for people south of the development, therefore, request City verify the developer's hydrological engineering so flooding does not worsen; development is being built very close to a floodplain area; increased traffic on area streets, possibly even with gridlock on Kimberly Avenue; both Elk Mountain Scenic Highway and Beaverdam Road are already hazardous to pedestrians and bicyclists; the developer should be required to install sidewalks around the entire perimeter of the property, especially around the property abutting Elk Mountain Scenic Highway; connection of the walkway south of Tsali Trail to Beaverdam Drive and the proposed Beaverdam Greenway; speed of traffic on Elk Mountain Scenic Highway is too high; proposed development homes will shadow existing modest homes; eliminate entrance on Tsali Trail; proposed density is excessive and places too much burden on the existing infrastructure; placing the bulk of the high density near the existing single-family homes depreciates property values; only the residents of the development will benefit from the greenspace; the actual number of units that could be built on Thoms Estate property of 83 acres may be somewhere between 100 and 140; traffic analysis is flawed in that none of the entrances are clearly indicated on the site plan; request for City to prohibit gated communities; existing traffic corridors cannot accept the additional traffic from development of the Thoms Estate; in the immediate future, other developments are proposed or have been approved that will increase the population, traffic and infrastructure requirements in Beaverdam even more; the development holds no tangible amenities for the existing communities; residents at the top end of Beaverdam Road are concerned about how they will be evacuated in an emergency, e.g. flash flood; request for a moratorium on building large subdivisions in Beaverdam Valley until the roads, water and sewer systems are upgraded to handle the additional stress; since there is no hope to widen Beaverdam Road, Elk Mountain Scenic Highway, Kimberly Avenue and Merrimon Avenue, the City should work with the County to adopt a policy with a long range prospective of traffic before consideration of the Thoms Estate development; and the history of the Thoms Estate has been an open Estate until the current owner has taken residence:

Mr. Jerry Sherrill, resident on Elk Mountain Scenic Highway

Mr. Brad Brock, resident of lower end of Wild Cherry Road

Mr. Sean O'Connell, resident on Edgedale Drive (Neighborhood Exhibit 2)

Ms. Susie Berl, representing the Creekside Homeowners Association

Ms. Julie Roepnack, resident on Elk Mountain Scenic Highway

A resident on Wisteria Drive

Mr. Gerald Green, resident on Cumberland Avenue

Dr. Robert Phillips, resident on Wisteria Drive

Ms. Elaine Light

Ms. Nickie Marmo, resident on Beaverdam Road

Ms. Julie Niwinski, resident on Wild Cherry Road

Mr. Don Cole, resident on Robinhood Road

A resident on Brooklyn Road

Ms. Mary Jo Simpson, resident on Wild Cherry Road

Mr. Bill Wescott spoke in support of the conditional use permit. He felt the developer is restoring a beautiful piece of property, especially with the preservation of the Killian House. This is a high quality development. He hoped that some of the issues could be resolved because the gated and traffic issues are not peculiar to this Thoms Estate development.

Mr. Sam Wheeler, resident on Tsali Trail, spoke in support of the development because there is no perfect development. The issue of gates is purely an economic issue.

Ms. Francie Talley, resident on Wild Cherry Road, spoke about the need for a walking/ biking trail on Beaverdam Road as development increases. Being able to use alternative ways of transportation is an environmental necessity.

Mr. Craig Justus noted that change is very emotional. Developers who build in the community need to know what is expected of them and they do meet those requirements. This project is 33% less density than what the City's ordinance allows on this piece of property. There are technical standards that say residential lots shall abut a public street or a private street, built to public standards. Throughout the ordinances, there are references to allow private streets in the City of Asheville. There is no written policy that says the City is going to prohibit gated

communities. The developer has presented a plan and has spent a lot of money in anticipation of a great project that preserves a lot of open space and he is asking for private roads and a gated community to control access. Unless the development drives the need to have connectivity, City staff has not said that connectivity is required as a manner of normal operation of the roads in that area. We have dealt with the connectivity situation regarding emergency vehicles. The developer is dedicating a park to the City in order to conform to the City's Greenway Plan. The development standard variation they are asking for is clustering to preserve open space. He urged Council to approve the conditional use permit.

After rebuttal, Mayor Bellamy closed the public hearing at 9:58 p.m.

Throughout discussion, Mr. Pennington responded to several questions, some being, but are not limited to: will there be only one construction entrance throughout the build-out; why was the cluster approved which was so close to a road; what kind of buffer is around the clustered area and around the entire perimeter of the property; did the City's bridge upgrade have anything to do with this project or was it normal maintenance; does this development represent smart growth; and does the Town of Biltmore Forest have a policy prohibiting gated communities.

In response to Councilman Freeborn, Mr. Pennington said that in order for the developer to proceed with the alternate plan without Council approval the property would have to be a major subdivision with review by the TRC for all applicable codes. This property does have hillside areas greater than 220 feet which regulate grading and the amount of density you can have. Also, when you subdivide there are certain lot frontages you have to have and abut a public street or a street built to City standards. Staff only evaluated the plan before Council and not the alternate plan. If the developer goes through TRC with a major subdivision element and if they met all of their density requirements and the grading allowances, then it is something that could be reviewed before that body as a major subdivision.

Upon inquiry of Councilman Mumpower, Mr. Pennington said the developer has proposed some best management practices in relation to vegetated inceptor swales, rain gardens and other storm control devices to maintain water on-site.

In response to Councilman Mumpower, Mr. Pennington said that we do not have a formal policy restricting people from putting in gated communities. The statement in the Technical Standards Manual states "the City discourages the use of cul-de-sac and encourages connectivity of streets for safety and improved access. Where permitted, a pedestrian connection to adjacent development may be required." Planning & Development Director Scott Shuford also responded that we discourage gated communities where we can, but we do not have anything in our Code to prohibit them. "The Ramble" is a gated community with private streets that meet the City's standards.

When Councilman Mumpower asked if Tsali Trail could be eliminated as an access, Mr. Pennington said the entrance at Tsali Trail was originally proposed to line up with Edgedale Drive. There was an outcry from the neighbors about the impact of having that line up. Then there came a proposal from former Traffic Engineer Anthony Butzek to shift that westward so it

would be closer to Elk Mountain Scenic Highway, and by doing that, it might have lost its intent.

Regarding the public parking being proposed, Councilman Mumpower asked if the City has reviewed the cost factors, or if there is even a need for a park that size in a floodplain. He wondered if this will be a City benefit or a liability. Mr. Pennington responded that this is in the conception phase and he didn't believe it has been discussed with the Parks & Recreation Department.

Councilwoman Cape hoped that this development is not an either/or situation - either Council approves the developer's plan or they build the alternate plan. She didn't hear the neighbors say they wanted to drive through the new community, only that they wanted to walk in this new community and be neighbors. She hoped that the developer would put together an alternate proposal. Mr. Pennington noted some options that might aid Council in reaching a compromise regarding the issue of whether the roads and sidewalks should remain open for public access. Should Council feel that this is not feasible, then staff would recommend that other options be explored including, but not limited to: (1) keep sidewalks open for public access (but not roads); (2) require other off-site improvements to aid in pedestrian safety; and (3) manage public access for vehicles by allowing the gates to be open from sun-up to sun-down and at any time as requested by emergency management officials.

Councilman Davis asked if other growth in the area was considered in the traffic study. Ms. Gay Sprague, Sprague & Craig Consulting Engineers in Greenville, S.C., said that City staff did ask her to review the TIA because the current Traffic Engineer conducted the study before he became employed by the City and that would be a conflict of interest. The City's ordinance requires background traffic be included and the new approved development was included in this study. There was an assumption of a very steady rate of growth on the road (which included the new approved development). The City's ordinance requires that analyses be done by standard methodologies and those were used in the study and all the results came out at an acceptable level of service.

In response to Councilman Davis, Mr. Shuford said that we knew that there was an effort to provide some level of community access to the area for a park. But, this is the first we heard that it was going to be a public park. As a result, we don't have the analysis to say that is something that we as a City can take on. That's not saying it's not something extremely desirable either. As far as that component is concerned, if Council wants to move forward, he will try to craft a condition for Council, or if Council wants to postpone action, staff will get more information.

Mr. Smith said that the controlled access to the community is in the minds of the consumers and at this price point is an added element of security. If it is the consumer's perception, it is their reality and they will pay more for it. We had no intention of offending anyone by the introduction of the gates. We did it with the hope we could reduce the density and increase the value. He was not opposed at all to evaluate locations (Tsali Trail and Wild Cherry Road) to find a good, safe spot along Elk Mountain Scenic Highway to where we could have

pedestrian access so they could enjoy some of the open areas and some of the common amenities that are available there.

Councilman Davis hoped that Tsali Trail could be used for possibly a pedestrian access, but felt it should be eliminated as a vehicular access.

When Councilman Newman asked Mr. Dungan if he was concerned that if Council did not approve this plan, with conditions, that the alternate plan could be built without City Council approval, Mr. Dungan replied that he was not concerned in that he didn't think they can get that many units on the property once they have to meet all the City's requirements.

Councilman Mumpower moved to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; and (9) a minimum of two pedestrian access points onto the development. Said motion died for a lack of a second.

Councilman Mumpower said that this is a city and it has to grow. If people don't want property to be developed, then they must purchase it or otherwise accept the fact that City Council does its best with smart growth, which consists of trying to be fair and even-handed. Personally he doesn't like gated communities, but that's not his role. His role is to look at our governing ordinances and determine if they have met the criteria and did we set up a filtering process that they had a reasonable chance of getting through. Then we make a decision on whether they tried to make a good faith effort to do something with their property within the restraints of our governing ordinances. He does find that they do meet the seven conditional use standards.

Upon inquiry of Councilman Freeborn, Mr. Smith said that they had no problem with eliminating the access point onto Tsali Trail.

In response to Councilman Freeborn regarding the long-term costs associated with the public park, Mr. Smith said that they never got into defining exactly what that park was. It seemed like a logical use of the land. We have let it evolve along the way. He would like the opportunity to evaluate whether putting in some kind of a conservation easement or something that might foster a wildlife habitat or something like that makes sense, but he wasn't sure what that is at this point.

When Councilman Freeborn asked what the price point would be, Mr. Smith said they haven't finished the pricing structure, but suspected they would range from approximately \$400,000-1,000,000.

In response to Councilman Freeborn, Ms. Sprague said that the intersection at Merrimon Avenue and Beaverdam Road is currently at a level of service "C" and in the build out year (2010), with the other developments in the area and some regular rate of growth, it will be a level of service "D".

Councilman Freeborn said that before the project is built out, he feared that people will before Council asking that more public dollars be spent on that intersection. He felt this is a model project, but not on a road that is already at a level of service "C". He feels this will be a burden on our community. He can understand that a gated community will drive the price point, but we have other high end communities in Asheville at the same price point that are not gated.

We need to make it clear to the development community what exactly it is that we want, because we are growing as a community and we do have infill issues. This isn't the kind of infill that we want to see, but the essence of the project is what we want to see.

Councilwoman Cape said that the International Traffic Engineers have just come up with a traffic analysis that level of service is not an adequate way to talk about traffic. She would like City Council to direct its staff to look at traffic analyses that makes a difference in our community, not just on level of service.

Councilman Cape moved to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be

reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) There be two accesses to the project - one at Elk Mountain Scenic Highway and one on Beaverdam Road, with the Killian House being a gatehouse to be maintained by the developer; (10) accessibility for pedestrian and bicyclists amenities through the community; and (11) move the parking in the multi-family area so that they are internal to the project. This motion was seconded by Councilman Davis.

Councilman Mumpower felt that the elimination of the Tsali Trail as an access point should be added as a condition, as well as some language regarding the public park and making it our option to whether we accept it or not.

When Councilman Mumpower asked what risk factors are involved in the application of our ordinances on an arbitrary basis, City Attorney Oast responded that we may be at risk of having the City Council decision overturned.

Regarding to the access on Beaverdam Road, Mr. Justus said that one problem was with the site distance. In fact the entrance on Beaverdam Road was the developer's first choice. But, the former City Traffic Engineer didn't think it was a good idea.

Councilwoman Cape requested that we have an analysis of whether or not an entrance onto Beaverdam Road is safe and if so, to recommend that.

With regard to the access on Beaverdam Road, Mr. Shuford said that there are a lot of constraints and a lot of consequences of trying to access directly onto Beaverdam Road as opposed to utilizing Wild Cherry Road, ranging from environmental consequences to some of the site distance issues. From staff's standpoint, taking into account the former City's Traffic Engineer's comments, staff is comfortable with two access points.

Councilwoman Cape and Councilman Davis both agreed to delete condition nine from their motion because of the constraints of accessing directly onto Beaverdam Road.

Councilwoman Cape and Councilman Davis both agreed to include a condition to eliminate Tsali Trail as an access point.

Councilwoman Cape felt it was important for the developer preserve the Killian House. It is an asset to the entire community, including the development. City Attorney said we know we want a greenway through that property. As far as preserving the property or dedicating it as a public park, that is an issue we don't have enough information on to make a decision. Therefore, he suggested a condition that the developer dedicate a greenway through that property and that the Killian House and the associated acreage be offered to the City as a park. We then have the option of not accepting it and if for reasons satisfactory to us (like it's too expensive and we don't accept it), and that if the developer chooses to use the property in another way, it comes back to City Council as a modification to the conditional use permit.

Councilwoman Cape and Councilman Davis both agreed to include a condition that the developer dedicate a greenway through the property and that the Killian House and the associated acreage be offered to the City as a park (with the City's acceptance pending further investigation of the feasibility of acceptance).

Mayor Bellamy called for a vote on the following motion, which was made by Councilwoman Cape and seconded by Councilman Davis: Motion to grant a conditional use permit adopting the proposed Master Plan for the Thoms Estate located on Beaverdam Road, Wild Cherry Road and Elk Mountain Scenic Highway for a residential development consisting of 162 single and multi-family dwellings, with the requested modifications to the number of dwelling units per building, setbacks, sidewalk and road design, subject to the conditions recommended by city staff and also subject to the following conditions: (1) The main "spine" road must maintain a 50 foot right-of-way; (2) A cross access agreement must be executed between the Thoms property and the property to be retained by Selene Thoms for fire access purposes; (3) The project shall comply with all conditions outlined in the TRC staff report; (4) All site lighting must comply with the City's Lighting Ordinance and be equipped with 90 degree cut-off fixtures and directed away from adjoining properties and streets; (5) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (6) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans must gain approval through the Planning and Development Department; (7) This Project will be reviewed by the TRC prior to issuance of any building [or grading, etc....] permits; and (8) All roads shall be public roads or private roads built to City standards; all applicable State Building and Fire Code standards must be addressed in the final road design and layout; (9) accessibility for pedestrian and bicyclists amenities through the community; (10) move the parking in the multi-family area so that they are internal to the project; (11) eliminate Tsali Trail as an access point; and (12) the developer dedicate a greenway through that property and that the Killian House and the associated acreage be offered to the City as a park (with the City's acceptance pending further investigation of acceptance). Said motion failed on a 2-5 vote, with Councilwoman Cape and Councilman Davis voting "yes" and Mayor Bellamy, Vice-Mayor Jones, Councilman Freeborn, Councilman Mumpower and Councilman Newman voting "no."

Mayor Bellamy didn't feel the project meets the seven conditional use permit standards, with at least two of those standards not met being Condition No. 2 and Condition No. 7. She didn't feel the stormwater issues were addressed adequately. She felt the density on the developer's plan is located where it is because of the slopes and the alternative plan did not take into consideration any of the steep slopes. She was concerned that the issues raised today by the neighborhood are the same issues they expressed months ago, thus raising a concern of a neighborhood that is inclusive and inviting. There are some larger issues City Council will need to address. Our subdivision ordinances were created at a time when we needed the extra development in our community so we were open to a lot of different changes. Now that we are doing a lot of infill development, it is a problem and that ordinance needs to be addressed sooner rather than later. In addition, our steep slope ordinance will be coming before Council soon. She personally doesn't support gated communities, however, a few months ago the Housing Authority said that a solution to their issues is a gated community and Council felt that was

okay. We do need guiding principles to the UDO. We need to tell developers what the core values are that we want as a City Council. We need to decide what development and growth do we really want to occur and we also need to talk to the County about their land use ordinances and their desire for growth.

It was the consensus of City Council to instruct the City Manager to continue working on the issues raised by Mayor Bellamy.

Vice-Mayor Jones explained why she felt that Condition No. 4 and Condition No. 7 were not met by this project.

When Mayor Bellamy asked if the developer would be willing to review the concerns and try to address them, Mr. Justus replied “yes”, but Council will need to give them guidance on which items they which addressed. Because, due to time constraints, he didn’t have the opportunity to state that the developer will be doing better than what is existing now with stormwater. In terms of traffic, the experts, including the City’s Traffic Engineer, said there will be no problem with traffic and if at the TRC stage they would have imposed something upon them, they would have negotiated with that. They are willing to talk about traffic issues, but are uncertain who to talk to.

Mr. Shuford said that City Council has given staff a lot of input and we know what the issues are. We can start to address several of the issues. Another option would be to refer this back to the Planning & Zoning Commission for consideration and input on the specific issues.

After a brief discussion, Councilman Mumpower moved to reconsider this conditional use permit. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Mumpower and Councilman Newman voting “yes” and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting “no.”

Councilman Mumpower moved to table this conditional use permit for an indefinite period of time. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Councilwoman Cape, Councilman Davis, Councilman Mumpower and Councilman Newman voting “yes” and Mayor Bellamy, Vice-Mayor Jones and Councilman Freeborn voting “no.”

City Attorney Oast said that the public hearing will be re-advertised with notices being sent to the appropriate abutting property owners. He noted that City Council can re-open the public hearing when this matter comes back before Council, allow the public to comment only on the new information presented.

E. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 175 MARIETTA STREET FROM INSTITUTIONAL DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING IN ORDER TO REVIEW ACCESS FOR A FUTURE COMMERCIAL DEVELOPMENT

At the request of the petitioner, due to illness, Councilman Davis moved to continue this public hearing until February 20, 2007. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CHANGES TO THE BILLBOARD STANDARDS

Mayor Bellamy said that the public hearing on this matter was held on January 9, 2007. At the request of City Attorney Oast, Councilwoman Cape moved to continue this matter until February 27, 2007. This motion was seconded by Councilman Davis and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 07-29- RESOLUTION SETTING A PUBLIC HEARING DATE ON MARCH 20, 2007, ON AN ECONOMIC DEVELOPMENT AGREEMENT AND VOLUNTARY ANNEXATION FOR BILTMORE PARK TOWN CENTER

Summary: The consideration of a resolution fixing the date for a public hearing on an annexation agreement and voluntary annexation for Biltmore Park Town Center.

Biltmore Park Town Center is a proposed high-density, mixed use development project in south Buncombe County. The development program consists of approximately 200,000 sq. ft. of retail/dining; a 50,000 sq. ft. 15-screen cinema; 100,000 sq. ft. of new office space; 150 room hotel; approximately 264 housing units (175 rental/89 condo); and 1,850 spaces of structured parking. The estimated capital investment for the project is \$123-130 million. Job creation of 1,200 new jobs is expected at build-out. Construction employment is estimated to create 300 jobs. The developer has requested consideration being given for this investment and its early annexation in the form of an economic development grant agreement.

The project offers a number of important public benefits, and the developers have agreed to an immediate voluntary annexation of the project area, approximately 35 acres, which is currently not in the City.

The economic development grant in consideration of immediate voluntary annexation is to be paid in 5 annual installments, which take into account the prospective tax revenues (property, sales, etc.) from the property coming to the City, beginning with calendar year 2008.

Pursuant to NCGS 160A-31, petitions for voluntary annexation must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request. This area is contiguous to the existing corporate limits and qualifies for annexation by petition as set forth in NCGS 160A-31.

This project will require two actions, both of which are interdependent on each other for City involvement:

1. Approval of voluntary annexation agreement; and
2. Approval of economic development agreement.

The parties have agreed in concept to the terms outlined above, and the respective staffs are working out the details. These two interdependent agreements may be combined into one document. The law requires a public hearing on ten days notice for the voluntary annexation. Council also holds public hearings for economic development incentive agreements. These will be scheduled to coincide.

Pros:

- Provides for orderly growth of City and growth of tax base through acceptance of appropriate areas into corporate limits where owners desire annexation.
- Provides new economic development anchor opportunity for the City, by providing new City area to attract new employers and jobs, including construction jobs for extended periods.
- \$123 million increase to City tax base at project build-out.
- Meets the City of Asheville's definition of Smart Growth: "...makes efficient use of land, fully utilizes urban infrastructure...promotes variety of transportation & housing...protects architectural & environmental character of the City through compatible, high quality, & environmentally-sensitive development practices...implemented through effective policies, regulations, capital projects & incentives"
- Increase Asheville's efforts to develop Sense of Place and additional destinations to enhance tourism and length of visitor stays and increased visitor spending.
- High density mixed use and structured parking reduces land use by 23 acres.

Con:

- Marginal increase in service costs.

March 20, 2007, is the date recommended for the public hearings on this matter. Should City Council decide to proceed, the effective date of annexation would be April 30, 2007.

City staff recommends City Council adopt a resolution fixing the date for a public hearing on an annexation agreement and voluntary annexation for Biltmore Park Town Center.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Freeborn moved for the adoption of Resolution No. 07-29, setting a public hearing for March 20, 2007. This motion was seconded by Councilwoman Cape and carried unanimously.

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VII. OTHER BUSINESS:

Councilman Freeborn explained how the community can help Vance Elementary School to raise funds for worthy causes.

Councilman Mumpower presented the new Drug Commission poster for January-February, 2007. He also announced a short program on Thursday, February 22, 2007, sponsored by the Drug Commission - Shine Some Light on the Harms of Hard Drugs and encouraged the community to participate.

Mayor Bellamy announced a play at the Reid Center on Sunday, February 18, 2007. After that, the Department of Corrections Secretary will participate in a fund-raising dinner for the renovations at the Reid Center.

Councilwoman Cape briefed Council on a national conference she attended which looked at different ways in our community of health, land use planning, climate protection, etc. and the partnerships around those issues.

Mayor Bellamy briefed Council on a meeting she recently attended (which was the reason why she arrived at the Council meeting late) which dealt with the issue of supporting our court system with additional funding from our governor and our legislators. In conjunction with this issue, Councilman Mumpower explained the “48 Faces of Harm” program.

The following claims were received by the City of Asheville during the period of January 12-25, 2007: Ethel Pack (Transit Services), Kyle Gerhardt (Police), Latessa Johnson (Fire), Susan Kreidler (Transit Services), Judith Cavallo (Water) and Jamie Jones (Police). The following claims were received by the City of Asheville during the period of January 26 - February 8, 2007: Gayle Battles (Water), Andrew Pomeroy (Water), Mary L. Grile (Water), Ted Tolbert (Water), Fire Department (Water) and Pamela I. Norfleet (Water). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with a Complaint on January 31, 2007, which is generally described as follows: Devon Nemire-Pepe vs. City of Asheville. The nature of the proceeding is a complaint for personal injury as a result of a broken and missing piece of sidewalk and/or curb. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Ms. Helaine Greene, presented City Council with information of a salvage yard currently operating in the River District and squarely within a 100-year floodplain. She believed that this type of business poses a serious public safety hazard should the area ever be flooded again. City Manager Jackson updated City Council with a report shared with Ms. Greene.

At 11:51 p.m., Councilman Freeborn moved to continue this meeting, in order to hold a closed session, until Friday, February 16, 2007, at Noon, in the Council Chamber located on the 2nd Floor of the City Hall Building. This motion was seconded by Councilman Mumpower and carried unanimously.

Friday – February 16, 2007 - Noon

Continuation of Regular Meeting of Tuesday, February 13, 2007

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilwoman Robin L. Cape; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Keisha Lipe

Absent: None

Mayor Bellamy said that this is a continuation of the regular meeting held on Tuesday, February 13, 2007, and was continued until this date in order to hold a closed session.

At Noon, Councilwoman Cape moved to go into closed session for the following reasons: (1) to establish or to instruct City staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property (McCormick Heights) by purchase, option, exchange or lease. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11 (a) (5); and (2) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including litigation involving the following parties: City of Asheville, State of North Carolina, County of Buncombe, and Reid Thompson. The statutory authorization is N. C. Gen. Stat. sec. 143-318.11 (a) (3). This motion was seconded by Councilman Mumpower and carried unanimously.

At 12:57 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

At 12:58 p.m., after discussion of the Judge's decision on our legal challenge to the Sullivan Acts, it was the decision of City Council to appeal to the Supreme Court. Mayor Bellamy said Asheville is being treated differently so this action is necessary.

Mayor Bellamy said public meetings will be announced for education and input.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 1:01 p.m.

CITY CLERK

MAYOR